

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 778 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

MAHESHBHAI LALSING CHOUDHRI

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 778 of 2004
MR ANIL S DAVE for Petitioner No. 1
MR KAMEN N SHUKLA for Petitioner No. 1
MS ARCHANA RAVAL, AGP for Respondent No. 1-3
RULE SERVED for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu

has challenged his detention order dated 19-12-2003, by which he is detained under P.A.S.A. as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference of one solitary criminal case registered against the petitioner, however, no statement of any witness is recorded by the authority. The detaining authority after considering the material on record has passed the order of detention.

2) Mr.Dave, learned advocate for the petitioner submitted that the last incident against the petitioner was of 6th August 2003, and after a considerable time of about more than four months the order of detention was passed on 19-12-2003. He also submitted that there is only one solitary case registered against the petitioner and, therefore, it cannot be said that there is breach of public order.

In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of

the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition in para 14 is not controverted by the authority. Under these circumstances, there is no other alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of incident.

4) For the foregoing reasons, this petition is allowed. The order of detention dated 19-12-2003 is quashed and set aside. The detenu, Maheshbhai Lalsing Choudhri is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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